HONORABLE RONALD B. LEIGHTON

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

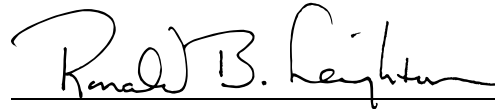|	

MATTHEW BRAUN, et al,
 	
              Plaintiff,
 	
     v.
 	
 CROWN CRAFTS INFANT
 PRODUCTS, INC., et al,
 	
              Defendant.
	CASE NO. C12-5811RBL
	
	 ORDER DENYING PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' AFFIRMATIVE DEFENSES WITHOUT PREJUDICE

THIS MATTER is before the Court on Plaintiffs' Motion to Strike Defendants' Affirmative Defenses [Dkt. #11]. The Complaint in this matter was filed on September 11, 2012. This motion was filed on November 15, 2012. The defendants likely lacked the opportunity to substantiate the affirmative defenses with discovery. As the parties know full well, affirmative defenses must be alleged or lose them. The plaintiffs' motion alleges that the affirmative defenses do not meet the "fair notice" standard set forth in Rule 8(b) and by the United States Supreme Court in *Bell Atlantic Corp. v. Trombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007) and *Ashcroft v. Iqubal*, 556 U.S. 662, 129 S. Ct. 1937 (2009).

A motion to strike defenses as insufficient should be denied unless the moving party demonstrates that (1) there are no questions of fact, (2) any questions of law are clear and not in

1   dispute, and (3) under no set of circumstances can the defense succeed. *Campagnolo v. Full*

2   *Speed Ahead, Inc.*, 258 F.R.D. 663, 665 (W.D. Wash. 2009). The Motion to Strike should not be

3   granted unless it is clear that the matter to be stricken could have no possible bearing on the

4   subject of the litigation. *Neveu v. City of Fresno*, 390 F. Supp. 2nd 159, 1170 (E.D. Cal. 2005).

5   The plaintiffs' motion is premature. It also fails to comply with Local Rule 7(b) by filing

6   a Proposed Order with the Clerk. Therefore, this motion is **DENIED** without prejudice.

7   Dated this 12th day of December, 2012.

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                             Ronald B. Leighton

10   United States District Judge

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ORDER DENYING PLAINTIFFS' MOTION TO
STRIKE DEFENDANTS' AFFIRMATIVE
DEFENSES WITHOUT PREJUDICE - 2